Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN M VAN DE BERG (a trust);
Petitioner

v.

COMMISSIONER OF REVENUE;
Respondent

ON PETITION OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Stephen M. Van De Berg, Trustee
STEPHEN M VAN DE BERG (a trust)
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QUESTIONS PRESENTED

1. Did the appeals court err by ruling trusts cannot prosecute cases in the federal court system without an attorney when tax court rules specifically say trusts can prosecute cases in tax court without an attorney?
2. When the appeals court so ruled did they err by imposing a higher standard on appeal than the court rules specifically allow at trial?
3. Did said ruling violate Respondent's constitutionally secured right to due process?
4. Did said ruling violate Respondent's constitutionally secured right to access the courts?
5. Did the appeals court err by dismissing the case in accord with said ruling without allowing Petitioner additional time to secure its attorney on the case, when the appeals court's actions led Petitioner to reasonably believe that Petitioner did not need an attorney to prosecute this case?
6. When the appeals court presupposed what their ruling would be if they were to have heard the case, did they error in their presupposition by ignoring the Standard for Review for Summary Dismissal cases as set by this court?
7. When the appeals court presupposed what their ruling would be if they were to have heard the case, did they error in their presupposition by accepting as fact the tax court's ruling that the taxpayer in this case is someone other than Petitioner even though that ruling directly contradicts the facts of, and the nature of, this case?

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, STEPHEN M VAN DE BERG (a trust), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit below.

OPINIONS BELOW

The per curiam opinion of the United States 3rd Circuit Court of Appeals appears at Appendix A and is not precedential. The Tax Court's Order of Dismissal for Lack of Jurisdiction appears as Appendix B. The United States 3rd Circuit Court of Appeals' Denial of Petition for Rehearing appears at Appendix C.

JURISDICTION

The date on which the United States Court of Appeals decided this case was April 7, 2006. A timely petition for rehearing was denied by United States Court of Appeals on May 31, 2006. The basis for jurisdiction in the court of first instance is: Title 26 § 7482(a).

The jurisdiction of this Court is invoked under the Constitution and Title 28 § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

U.S. Constitution, Amendment I provides in pertinent part: "Congress shall make no law...abridging...the right of the people peaceably to...petition the government for a redress of grievances."

U.S. Constitution, Amendment V provides in pertinent part: "No person shall...be deprived of life, liberty, or property, without due process of law..."

U.S. Constitution, Amendment VII provides in pertinent part: "In suits at common law, where the value in controversy

shall exceed twenty dollars, the right of trial by jury shall be preserved..."

The Third Circuit Court of Appeals Local Rules at rule 107.2(a) states in pertinent part: "If the deficiency is not remedied during this [14 day] period, the clerk is authorized to dismiss the appeal for want of prosecution..."

The United States Tax Court's Rules at rule 24(b) states, "An estate or trust may be represented by a fiduciary thereof."

STATEMENT OF THE CASE

This case was filed in the tax court to contest a bogus Notice of Deficiency (hereinafter, "NOD"), which was issued in error and contains misleading, false and or incomprehensible information; this action was also brought to contest Respondent's apparent decision (without notification to Petitioner) to not finish processing Petitioner's 2002 Internal Revenue Service (hereinafter "IRS") Form 1041 tax return, which was correctly filled out according to IRS instructions and timely filed with IRS by Certified First Class mail through the United States Postal Service.

The tax court, contrary to the facts in this case and the Summary Dismissal Standard for Review, set by this court, dismissed the case for lack of jurisdiction alleging the Petitioner is not the taxpayer named on said bogus NOD.

Petitioner filed an appeal to the 3rd Circuit Court of Appeals to contest the tax court's erroneous ruling and also to contest the fact that the tax court had not addressed the matter of Petitioner's timely filed Form 1041.

Contrary to tax court rule 24(b), the appeals court dismissed the case for failure to prosecute; alleging that trusts cannot proceed in the federal courts without representation by an attorney.

The appeals court also gave a presupposed opinion of what their disposition would have been on the case had they heard it, alleging they would have summarily dismissed the

case on a de novo review for the same erroneous cause the tax court alleged.

Prior to said ruling, IRS began levying the funds they allege the taxpayer owes.

On April 19, 2006, Petitioner petitioned the appeals court for a rehearing noting all of the errors in its opinion;

The appeals court denied the petition for rehearing on May 31, 2006.

Wherefore, Petitioner filed this Petition with the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

This court should grant Petitioner's petition because the appeals court made the following errors:

1. The appeals court erred by ruling trusts cannot prosecute cases in the federal court system without an attorney when tax court rules specifically say trusts can prosecute cases in tax court without an attorney.

The United States Tax Court's Rules at rule 24(b) specifically allows trusts to proceed in Tax Court (without an attorney) through their trustees which is exactly how this case was brought; the rule states, "An estate or trust may be represented by a fiduciary thereof."

The appeals court, in support of its ruling cited *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02(1993); *United States v. Cocivera*, 104 F. 3d 566 (3d Cir. 1996); *Simbraw, Inc. v. United States*, 367 F.2d 373 (3d Cir 1966); *Harrison v. Wahatoyas, L.L.C.*, 253 F.3d 552, 556 (10 Cir. 2001); *Knoefler v. United Bank of Bismarck*, 20 F.3d 347,348 (8th Cir. 1994); and *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987); however, none of the cases cited were appealed from the tax court; and, therefore, none of these cases are either on-point or controlling in this case.

Wherefore, this court should allow Petitioner to proceed without an attorney and either hear this case de novo based on its merits, or remand the case to the appeals court for trial

de novo based on its merits, or remand the case to the tax court for trial based on it merits.

2. When the appeals court contradicted Tax Court Rule 24(b), by ruling trusts cannot prosecute cases in the federal court system without an attorney, they erred by imposing a higher standard on appeal than the court rules specifically allow at trial.

In *Osborn v. Bank of U.S.* this court addressed the question "of whether or not an Appellant should be allowed to proceed without an attorney" and ruled:

> "No reason is perceived why the Courts of Chancery should be more rigid in exacting the exhibition of a warrant of attorney than a Court of laws and, since the practice has, in fact, been the same in both Courts, **an appellate Court ought,** we think, **to be governed** in both **by the same rule.**"[Emphasis added.] *Osborn v. Bank of U.S.*, 22 U.S. 738 (1824).

In other words, if a case is allowed to proceed without an attorney in a trial court the "appellate court ought...to be governed...by the same rule."

When the appellate court conducts a de novo review of the lower court rulings, as is required by the Standard for Review for summary styled dismissals (see *East Wind Indus. v. United States, 196 F.3d 499 (1999)*), the court considers the case as if the lower court's ruling did not exist and reviews the case as if it were the trial court to determine whether or not there exists a genuine issue of material fact;

Therefore, denying Petitioner the right to proceed without an attorney on appeal when the tax court rules specifically allow the same is a violation Petitioner's right of due process, which is exactly why this court so ruled in *Osborn*;

Wherefore, *Osborn* shows the appeals court ruling in this case is erroneous. Each of the cases the appeals court cited supporting their erroneous ruling were based on *Osborn* primarily because in *Osborn* the Petitioner was required to proceed with an attorney. However, the subject matter of all of those cases were off-point to this matter at hand where the

court rules specifically allow trusts to proceed by and through their Trustee's (fiduciary) representation. On which point *Osborn* clearly recognizes the necessity that the appellate court must be governed by the same rule regarding representation as was the trial court.

This Court continues to frequently cite *Osborne* to this day affirming its longstanding rules.

Whereas, the appeals court's error was such a departure from the accepted and usual course of judicial proceeding as to call for the direct exercise of this Court's supervisory power to rule on this issue;

Wherefore, this court should allow Petitioner to proceed without an attorney and either hear this case de novo based on its merits, or remand the case to the appeals court for trial de novo based on its merits, or remand the case to the tax court for trial based on it merits.

3. In the face of the fact that the Tax Court Rules allow trusts to proceed in tax court without attorneys, which matter was specifically addressed and allowed in the tax court case respective to this petition, the appeals court's ruling to the contrary violates Petitioner's constitutionally secured right to redress of grievances, right to due process of law and or right to access to the courts.

a. In consideration of the numbered points above (in this section), to now, only on appeal, forbid Petitioner from proceeding violates Petitioner's constitutionally secured right to petition for redress of grievances (Amendment I), right to due process of law (Amendment V) and right of access to the courts (Amendment VII).

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; and, this court should allow Petitioner to proceed without an attorney and either hear this case de novo based on its merits, or remand the case to the appeals court for trial de novo based on its merits, or remand the case to the tax court for trial based on it merits.

b. This court has ruled:

"there are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause" *Societe Internationale Pour Participations Industrielles et Comme...*, (357 U.S. 197);

Though court rules generally do not allow trusts to proceed in federal court without an attorney, dismissing for failure to prosecute in the appeals court because Petitioner doesn't have an attorney when the tax court specifically allowed it, involves a rote application of court rules that clearly deprive Petitioner of its right to petition for redress of grievances (Amendment I), right of due process of law (Amendment V) and right of access to the courts (Amendment VII) and, especially when considered at least in the light of *Osborne v. Bank of U.S.* where, as noted above, this court ruled that," **an appellate Court ought,** we think**, to be governed** in both **by the same rule** [as the trial court]" [Emphasis Added];

Further, the only reason trusts are not generally allowed to proceed in courts, except by representation of an attorney, is the potential for a conflict of interest between the trust and the person serving in its trustee capacity; however, any such conflict could not have any greater effect on appeal than at trial;

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; and, this court should allow Petitioner to proceed without an attorney and either hear this case de novo based on its merits, or remand the case to the ap-

peals court for trial de novo based on its merits, or remand the case to the tax court for trial based on it merits.

c. This court has ruled:

"The words of the Due Process Clause, at a minimum, require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case". *Boddie v. Connecticut*, 401 U.S. 371;

Whereas, dismissing this case for failure to prosecute denies Petitioner an opportunity for a hearing on the merits of this case; and,

Whereas, Respondent has already levied the funds in contest in this case;

Wherefore, dismissing this case for failure to prosecute violates Petitioner's right to due process (Amendment V) and right of access to the courts (Amendment VII);

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; and, this court should allow Petitioner to proceed without an attorney and either hear this case de novo based on its merits, or remand the case to the appeals court for trial de novo based on its merits, or remand the case to the tax court for trial based on it merits.

4. The appeals court erred by dismissing the case without allowing Petitioner additional time to secure its attorney in this case when the appeals court's own actions indicated Petitioner did not need an attorney to prosecute this case.

a. All of the case law on standards to dismiss for failure to prosecute has been generated by cases that were dismissed in the district courts rather than on appeal, (likely because dismissals from the appeals court for that cause are rare do to this court's rule in *Osborne v. Bank of U.S.* , which again notes that when a person can proceed at trial without an attorney, they should be able to proceed

in the same manner on appeal). Due to case law in the district courts the standards for such dismissals are clear there:

1) "Of all possible sanctions, dismissal is considered "draconian," and an appellate court must be 'vigilant' in its review. Because of its severity, the court has circumscribed the range of cases in which dismissal may be used as a sanction.... Some have held that actions can be dismissed when there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing. This appears to be the standard used when cases are dismissed for want of prosecution or failure to comply with orders of the court, Fed. R. Civ. P. 41(b)." Maynard v. Nygren, 332 F.3d 462
2) "dismissal is a drastic sanction and should be reserved for those cases where there is a clear record of delay or contumacious conduct by the plaintiff." Donnelly v. Johns-Manville Sales Corp, (677 F.2d 339);
3) "dismissal is a harsh sanction which should be resorted to only in extreme cases." Harris v. Cuyler, 664 F.2d at 390-91; Dyotherm Corp. v. Turbo Machine Co., 392 F.2d 146, 148-49 (3d Cir. 1968); Accord, Glo Co. v. Murchison & Co., 397 F.2d 928, 929 (3d Cir.), cert. denied, 393 U.S. 939 (89 S. Ct. 290, 21 L. Ed. 2d 276) (1968); Peardon v. Chapman, 169 F.2d 909, 913 (3d Cir. 1948).

b. As the following sequence of events demonstrates, Petitioner had the reasonable expectation Petitioner would either be allowed to proceed without an attorney or be granted additional time to secure its attorney in this case:

1) All appellate briefs were filed with the clerk by May 13, 2005; however, the clerk did not immediately submit the case to the court for its review,

rather, the clerk sent a letter to Petitioner on July 20, 2005 stating that 'failure to have counsel enter an appearance by August 10, 2005 may result in an appeal being dismissed for failure to timely prosecute';

2) On July 29, 2005, Petitioner sent a responsive letter to the appeals court that detailed the lawful causes why Petitioner could prosecute this case without an attorney, not the least of which were: the court rules, the due process violation that would occur if the court were to so dismiss and showing Petitioner had in its response brief requested the court to directly rule on the matter prior to dismissing so that Petitioner could appropriately and timely respond;
3) The clerk did not automatically dismiss the case per the court's, Dismissal for Failure to Prosecute and the appeals court never directly ruled on Respondent's motion; Local Rule 107.2(a) states, "If the deficiency is not remedied during this [14 day] period, the clerk is authorized to dismiss the appeal for want of prosecution..." Since the appeal was not automatically dismissed, Petitioner reasonably assumed that "the deficiency" that lead the appeals court to issue said letter was resolved by Petitioner's on-point response.
4) On October 11, 2005, after the court clerk had a long period to consider whether or not to allow Petitioner to proceed without an attorney based on the letter and briefs, the clerk finally responded by submitting the case to the court on the briefs and notifying Petitioner of its docketing;
5) Since the submission of the case to the court was the appeals court's only response to Petitioner's responsive letter Petitioner reasonably understood either: Petitioner was properly allowed to prosecute the case without an attorney; or, the judges of

the court would directly respond to Petitioner's motion before the court and instruct Petitioner to get an attorney to prosecute its case, providing Petitioner with sufficient time to so secure its attorney;

6) Petitioner asked the court the status of this case via telephone numerous times between October 11, 2005 and April 6, 2006 specifically to verify Petitioner's understanding expressed in the last paragraph (5) was correct; each time Petitioner was told: the case had been submitted to the court; the case was awaiting a ruling by the panel of the judges; this was normal for an appellate court case; and not once during these status checks did the court indicate in any manner that Petitioner needed an attorney to proceed;

Wherefore, Petitioner had the reasonable expectation that the court's concerns were allayed by Petitioner's motion and Petitioner was allowed to proceed without an attorney due to the underlying court rules that specifically allow trusts to so proceed and the Constitution's security of the same through its provisions as shown above;

Wherefore, Petitioner had no reasonable cause to secure its attorney to ~~prosecute~~ this case.

Wherefore, it is obvious from the record that Petitioner: acted in good faith, did not delay and had the reasonable expectation that the case would move forward without an attorney;

Wherefore, it is indeed draconian to dismiss this case for failure to prosecute when Petitioner had every reasonable expectation to believe that in fact Petitioner was properly prosecuting the case in accord with the rules of court and had no reasonable way of knowing the court was considering Petitioner was not already properly prosecuting the case.

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial

proceedings as to call for an exercise of this Court's supervisory power. The appeals court's dismissal for failure to prosecute is a draconian punishment that in effect authorizes Respondent to deprive Petitioner of due process of law thus further violating Petitioner's constitutionally secured rights; therefore, this court must allow Petitioner to either proceed without an attorney or grant Petitioner additional time to secure its attorney in this case.
b. The appeals court's opinion states, "we will dismiss the appeal for failure to prosecute because Van De Berg has not complied with our directive to retain counsel for STEPHEN M VAN DE BERG (Trust)"; seemingly implying that they gave Petitioner such a directive or otherwise ruled on Petitioner's respective motion on the matter, implying that Petitioner had flagrantly disobeyed their directive; however, nothing could be further from the case. If the court had clearly responded to Petitioner's motion by responsively ruling or directing Petitioner needed an attorney to prosecute this case, Petitioner would have immediately taken the necessary steps to compel its attorney to accept this case;

Though the court clerk sent its July 20, 2005 letter to Petitioner noting the possibility of the court dismissing if Petitioner did not secure counsel, such a letter can hardly be considered "a directive"; especially when Petitioner's response letter stood before the court as a motion addressing the matter with a reasonable response showing cause why no such attorney could be necessary where the underlying court rules specifically excluded such a necessity.

In response to said motion the court, ex debito justitiae, should have ruled on said motion giving a formal directive, which it did not do.

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. The appeals courts dismissal for failure

to prosecute is a draconian punishment that in effect authorizes Respondent to deprive Petitioner of due process of law thus further violating Petitioner's constitutionally secured rights; therefore, this court must allow Petitioner to either proceed without an attorney or grant Petitioner additional time to secure its attorney in this case.

5. When the appeals court presupposed what their ruling would be if they were to have heard the case, they erred in their presupposition by ignoring the Standard for Review for Summary Dismissal cases as set by this court.

Though the appellate court did not directly rule on the merits of the case they did issue a presupposition of an implied rule on the alleged merits of the case with no consideration of the Standards for Review of such a summary dismissal as they presupposed. And whereas, the Standard for Review of an appeal of a summary dismissal requires the appellate court to review the case "de novo", we must here also review the appeals court's presupposed ruling as if they had so ruled.

In considering a summary judgment styled dismissal, even this court follows the Standard for Review it has set for all such dismissals on appeal, which standard is as follows:

a. "Especially when considering a Summary Judgment Motion, a plaintiff's case must be heard in the light most favorable to plaintiff" *Cruz v. Beto*, 405 U.S. 319,322 (1972); *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994).

b. "In reviewing on certiorari a decision granting a motion to dismiss, the United States Supreme Court must accept as true all the factual allegations in the complaint." *Leatherman v. Tarrant County Narcotics Intelligence*, 507 U.S. 163;

c. "Thus, the court of appeals must review all of the facts and inferences in the light most favorable to nonmovant in order to determine whether there is a genuine issue of material fact. If the court of appeals

finds that no genuine issue of material fact remains, then it must determine whether the movant is entitled to judgment as a matter of law." East Wind Indus. v. United States, 196 F.3d 499 (1999)

d. "De novo review requires the court of appeals to apply the same test used by the district court, namely, whether there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *East Wind Indus. v. United States*, 196 F.3d 499 (1999);

e. "Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim for relief"; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);

Had the appeals court followed said Standard for Review, they would have found:

a. Petitioner clearly presented material facts, easily evidenced by the facts in the case all of which could easily be verified in a trial of the facts, supporting its case which plainly demonstrates;

1) Petitioner is a trust that was created by the Social Security Administration (hereinafter "SSA");
2) On creation, its creator, SSA, created and assigned Petitioner its unique Social Security number (473-88-6277) (hereinafter "SSN"), which SSA claims they did 'to uniquely distinguish Petitioner from any other person of the same or a similar name';
3) Said bogus NOD in question was addressed only to Petitioner's name and SSN, which uniquely identifies Petitioner and no other person;
4) Petitioner is the only person that contracted for and received the funds IRS used as the "income source" from which they allegedly derived the information they used to compile said bogus NOD.
5) In the case Respondent presented no factual contest to these material facts, under administrative reviews held before the tax court case, during said

case or thereafter. Respondent only made a simplistic unsupported spurious allegation that Petitioner is not the person named on said Bogus NOD, in spite of the material facts of the case especially as noted at paragraph "3" on the prior page.

6) Petitioner timely filed the Tax Court case and accordingly has timely prosecuted this appeal;

b. Wherefore, this court should find that:
   1) In making its presupposed implied ruling the appellate court failed to review the case in the light most favorable to Petitioner.
   2) In making its presupposed implied ruling the appellate court failed to review the case considering the material facts presented by Petitioner are all true.
   3) In making its presupposed implied ruling the appellate court failed to review the case considering the relevant material facts of the case were brought into question by Respondent's said spurious allegation, which question, ex debito justitiae, can only be resolved in a trial of the facts.
   4) In making its presupposed implied ruling the appellate court failed to review the case considering there is a reasonable chance Petitioner could easily prove the facts of the case in trial;
c. Respondent did not demonstrate the absence of a genuine issue of material fact in this case; wherefore, the appeals court's presupposed implied ruling is in error and cannot lawfully be supported.
d. If the court considers this case in the light most favorable to the Petitioner, the court will find a genuine issue of material fact and remand the case to the tax court for a trial.
e. Wherefore, in making its presupposed implied ruling the appellate court erred; and, if it were to actually hear Petitioner's appeal based upon the Standards for

> Review set by this court, based on the merits of Petitioner's case the appellate court should instead reverse the tax court's ruling and either hear the case itself de novo or remand the case to the tax court for a trial of the facts.

Wherefore, since Petitioner can reasonably prove Petitioner's case, the appellate court's presupposed implied ruling of dismissal of this case does not meet the Standard for Review and should the appeals court actually review the case it should in accord with the Standards for Review hear the case de novo and then so rule or remand to the tax court for a trial of the facts.

Whereas, the appellate court's presupposed implied ruling was made in error failing to follow the Standards for Review this instant court should not only consider and rule on this appeal considering the appellate court's departure from the accepted and usual course of judicial proceedings as shown aboye but in hearing this appeal this court should also on remanding this case, instruct the appellate and or trial court to hear such matters in accord with the Standards for Review and rules set by this court.

Wherefore, Petitioner asks this court to reverse the appeals court's errors and either hear this case de novo based on its merits, or remand the case to the appeals court for trial de novo based on its merits, or remand the case to the tax court for trial based on it merits.

6. When the appeals court presupposed what their ruling would be if they were to have heard the case, they erred in their presupposition by accepting as fact the tax court's ruling that the taxpayer in this case is someone other than Petitioner even though that ruling directly contradicts the facts of, and the nature of, this case

The appeals court stated, "*Even if we were to reach the merits of the appeal, we would affirm the Tax Court's order dismissing the petition for lack of jurisdiction...we agree with the Tax Court that* <u>*STEPHEN M VAN DE BERG*</u> *(Trust),*

which filed the petition was not the proper party in the underlying action."; however:

a. As was shown in Petitioner's Response brief on page 4, Petitioner was created by contract with SSA in accord with the Social Security Act of 1935, et. seq (hereinafter, "SS Act"), the elements of which were explained in detail;
b. As was noted in Petitioner's Informal brief on Page 6, Petitioner is a trust that is identified at least whenever its name and or its unique SSN are used;
c. As was shown in Petitioner's Informal Brief on Pages 19, 20, 22 and 23, it is obvious that Respondent issued said bogus NOD to Petitioner and that Petitioner is the person who filed this suit:
    1) Both said bogus NOD and the court documents filed by Petitioner have Petitioner's name, STEPHEN M VAN DE BERG, and no other persons name,
    2) Both said bogus NOD and the court documents have only Petitioner's Taxpayer Identification Number, specifically its SSN: 473-88-6277, which number was not issued to a man and does not represent any man; and,
    3) Both said bogus NOD and the court documents only detail or relate to funds earned only by Petitioner;
d. As was raised in Petitioner's Informal Brief on Page 15, said bogus NOD and said Petitioner identifying court documents speak for themselves and cannot be changed by Respondent's unsupported spurious allegations or opinion;
e. SSA has no contest with Petitioner's nature as they created it; which is evidenced by SSA's amending SSA records in accord with the Administrative Procedures Act to include a formal "trust indenture" as an Instrument of Acknowledgment as was described in

the exhibit entered into evidence at the December 15, 2004 Tax Court Motion Hearing;

f. Respondent is not a party to the agreements between Petitioner and its creator, so Respondent's spurious unsubstantiated opinion regarding that relationship and Petitioner's nature is irrelevant to the case and only raises a contest of the facts, which contest prescribes trial and rules out any possibility of a lawful summary judgment;

g. Respondent has no right or ability to challenge or change the nature of said agreements between Petitioner and SSA or the nature of the parties to said agreements;

h. The material facts of the case and SSA records show Respondent's spurious opinion that Petitioner is not the proper party to bring this suit is false;

i. The mere allegation that a man was numbered as a result of the relationship between Petitioner and SSA goes against both the SS Act, which did not authorize SSA to number any man, and God's Law, which forbids the Children of Israel from accepting any such number, see Genesis 13:16; 2 Samuel 24:10;

j. Were SSA to offer any such number to any man bound by covenant with God under God's Laws, any agreement to accept any such number would subject the man to potential eternal suffering; therefore, the person that lends consciousness and physical capacity to Petitioner would never agree to accept such a relationship with SSA or with any other party. To make such an allegation is ridiculous!

Whereas, the appellate court's presupposed implied ruling was made in error contrary to the facts of this case, this instant court should consider and rule on this appeal recognizing Petitioner is the proper party to bring this suit and in hearing this appeal this court should also on remanding this case, instruct the appellate and or trial court to hear such matters considering Petitioner is the proper party to bring this

suit or at least offering a trial of the facts alleged in the case to substantiate the same before making any such summary dismissal.

Wherefore, Petitioner asks this court to reverse the appeals court's errors and remand the case to the tax court for a trial of the facts;

CONCLUSION

In consideration of the fact that this Petition shows the appeals court's errors were such a departure from the accepted and usual course of judicial proceeding as to call for the direct exercise of this Court's supervisory power to rule on the issues presented herein; wherefore, this petition for a writ of certiorari should be granted at the debt of justice for the causes shown above.

Respectfully submitted,

STEPHEN M VAN DE BERG (a trust)
c/o P.O. Box 138
Convent Station, New Jersey 07961
(201) 450-4225

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 05-1569

STEPHEN M. VAN DE BERG (Trust),
Petitioner
v.
COMMISSIONER OF INTERNAL REVENUE

On Appeal From the United States Tax Court
(T.C. No. 17072-04)
Tax Court Judge: Honorable Peter J. Panuthos

Submitted Under Third Circuit LAR 34.1(a)
October 3, 2005
Before: ROTH, MCKEE AND ALDISERT, CIRCUIT JUDGES
(Filed: April 7, 2006)

OPINION

PER CURIAM

On June 15, 2004, the Commissioner of Internal Revenue issued a notice of deficiency to Stephen M. Van De Berg determining that he had a tax deficiency for the 2002 tax year. On September 9, 2004, Van De Berg, acting on behalf of "STEPHEN M VAN DE BERG (Trust)," filed a Tax Court petition for redetermination of the deficiency. In the petition, Van De Berg alleged that the income referenced in the notice of the deficiency was not taxable to him, but rather was attributable to the Trust. Van De Berg further alleged that the Trust had properly filed a Form 1041 for the 2002 tax year and that the notice of deficiency issued to him as an individual was "void on its face."

At a hearing held before the Tax Court on December 15, 2004, the Commissioner orally moved to dismiss the petition for lack of jurisdiction. Specifically, the Commissioner argued that the notice of deficiency had been issued to an individual, Stephen M. Van De Berg, and therefore, the Trust was not the proper party to file the petition for redetermination of deficiency. Van De Berg appeared at the December 15 hearing as trustee on behalf of the Trust, and insisted that the notice of deficiency had been issued to the Trust. After finding no evidence that the Commissioner had determined a deficiency against the Trust, the Tax Court granted the Commissioner's motion to dismiss for lack of jurisdiction pursuant to Tax Court Rule 60(a) on January 5, 2005. This appeal by STEPHEN M VAN DE BERG (Trust) followed.[1]

On July 20, 2005, this Court advised Van De Berg by letter that because he is not an attorney duly admitted to practice law he could not represent STEPHEN M VAN DE BERG (Trust) before this Court. Van De Berg was advised that his appeal could be 3 dismissed for failure to timely prosecute under 3d Cir. LAR Misc. 107.2 if a licensed attorney did not enter an appearance on behalf of STEPHEN M VAN DE BERG (Trust). Van De Berg responded to the July 20 letter with a letter of his own arguing that he should be allowed to represent STEPHEN M VAN DE BERG (Trust) pro se in this appeal.

"It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel. As the courts have recognized, the rationale for that rule applies equally to all artificial entities." Rowland v. California Men's Colony, 506 U.S. 194, 201-02 (1993); see also United States v. Cocivera, 104 F.3d 566 (3d Cir. 1996);

[1]All documents filed with this Court have been signed on behalf of STEVEN M VAN DE BERG (Trust) by Van De Berg as the trustee for the Trust, including, inter alia, the notice of appeal, motion to amend case caption, motion to correct transcript, informal brief, and reply brief.

Simbraw, Inc. v. United States, 367 F.2d 373 (3d Cir. 1966); Harrison v. Wahtoyas, L.L.C., 253 F.3d 552, 556 (10th Cir. 2001) ("As a general matter, a corporation or other business entity can only appear in court through an attorney and not a non-attorney corporate officer appearing pro se."). Thus, a non-lawyer trustee, such as Van De Berg, may not represent a trust pro se before this Court. See Knoefler v. United Bank of Bismarck, 20 F.3d 347, 348 (8th Cir. 1994) ("A nonlawyer, such as these purported 'trustees pro se' has no right to represent another entity, i.e., a trust, in a court of the United States"); see also C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987) (holding that a pro se litigant, who had filed an action as trustee on behalf of a trust, "ha[d] no authority to appear as an attorney for others than himself"). Van De Berg's arguments to the contrary are unavailing. Accordingly, we will dismiss the appeal for failure to prosecute because Van De Berg has not complied with our directive to retain counsel for STEPHEN M VAN DE BERG (Trust). The motions to amend case caption and correct the transcript from the 12/15/04 Tax Court motion hearing are thus denied.

Even if we were to reach the merits of the appeal, we would affirm the Tax Court's order dismissing the petition for lack of jurisdiction. Pursuant to Tax Court Rule 60(a), a petition for redetermination of deficiency must be filed by the person against whom the Commissioner determined the deficiency, or someone lawfully authorized to act on behalf of that person. Rule 60(a) further provides that a petition timely filed shall not be dismissed because it was filed by an improper party until a reasonable time has been allowed for ratification by the proper party. Here, we agree with the Tax Court that STEPHEN M VAN DE BERG (Trust), which filed the petition, was not the proper party in the underlying action. Therefore, the Tax Court did not err in dismissing the petition for lack of jurisdiction after having first allowed Van De Berg an opportunity to ratify the petition.

APPENDIX B

UNITED STATES TAX COURT
Washington, DC 20217

Docket no. 17072-04

STEPHEN M. VAN DE BERG TRUST,)
Petitioner)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent)

Order of Dismissal for Lack of Jurisdiction

On October 27, 2004, respondent filed a Motion of Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and to Impose a Penalty Under I.R.C. §6673 and a Motion to Change Caption. Respondent's motions were called for hearing at the Court's motions session held in Washington, D.C., on December 15, 2004. Counsel for respondent appeared at the hearing and made an oral motion to dismiss for lack of jurisdiction on the ground the notice of deficiency was issued to an individual, Stephen M. Van De Berg, and the petitioner in this case was not filed by a proper party. Stephen M. Van De Berg (Mr. Van De Berg) appeared at the hearing and offered argument in opposition to respondent's motions. Mr. Van De Berg insisted that the notice of deficiency was issued to a trust, i.e., Stephen M. Van De Berg Trust.

By Order dated December 16, 2004, the Court directed Mr. Van De Berg to file with the Court an Amendment to Petition ratifying and affirming the filing of the petitioner in this case. The Court cautioned Mr. Van De Berg that the Court would be inclined to jurisdiction if he failed to file such Amendment to Petition. On January 3, 2005, Mr. Van De Berg filed a Response in opposition to respondent's motions. Mr. Van De Berg failed to comply with the Court's Order dated December 16, 2004.

The notice of deficiency attached to the petition in this

case is addressed to Stephen M. Van De Berg. Consistent with Rule 60(a), Tax Court Rules of Practice and Procedure, the petition in this case must be brought by and in the name of the person against whom the Commissioner determined the deficiency. In the absence of any evidence that respondent determined a deficiency against Stephen M. Van De Berg Trust, we shall grant respondent's oral motion to dismiss for lack of jurisdiction.

Accordingly, upon due consideration and for cause, it is

ORDERED that respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and to Impose a Penalty Under I.R.C. §6673 filed October 27, 2004 is denied as moot. It is further

ORDERED that respondent's Motion to Change Caption, filed October 27, 2004 is denied as moot. It is further

ORDERED that respondent's oral motion to dismiss for lack of jurisdiction, made December 15, 2004, is granted and this case is dismissed for lack of jurisdiction on the ground the petition was not filed by a proper party.

/s/ Peter J. Panuthos
Peter J. Panuthos
Chief Special Trial Judge

ENTERED: JAN 5 2005

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

05-1569

Steven M. Van De Berg,
v.
Commissioner of Revenue

PRESENT: SCIRICA, Chief Judge, SLOVITER, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, VAN ANTWERPEN, CHAGARES, ALDISERT*
Circuit Judges

SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING *EN BANC*

The petition for rehearing filed by Petitioner having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing is DENIED.

BY THE COURT:
/s/ Theodore A. McKee
Circuit Judge

DATED: May 31, 2006
CMD/cc: Stephen M. Van De Berg
Particia Bowman, Esq.
Bruce R. Ellisen, Esq.

* Judge Aldisert's vote is limited to panel rehearing only